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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,828

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EXAMINER

LUONG, VINH

ART UNIT

PAPER NUMBER

3682

MAIL DATE

DELIVERY MODE

08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,828

Applicant(s)

SCHWERDT ET AL.

Examiner

Vinh T. Luong

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007 and 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2007 and 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).


Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. The amendments filed on May 7, 2007 and June 26, 2007 have been entered.
2. The drawings were received on May 7, 2007. These drawings are unaccepted by the Examiner because the amended drawings introduce new matter. See 37 CFR 1.121(f). For examples:

(a) The thickness of the beam 13 relative to its diameter as now shown is unsupported by the record as filed. As noted, the original FIG. 1 shows that the beam 13 is solid. Although the specification describes the cross tube 13, however, the specification does not describe, e.g., the thickness of the tube 13. The showing of a specific size, shape, and/or dimension of the thickness of the tube 13 within a full spectrum of possible sizes, shapes, and/or dimensions of the thicknesses of the tubes 13 is considered under the present disclosure to be new matter. *Cf., In re Smith*, 173 USPQ 679 (CCPA 1972) and *Ex parte George*, 230 USPQ 575, 578 (B.P.A.I. 1986); and

(b) The size, shape, dimension, and/or location of the A-pillars 18 relative to other elements such as the cross tube 13, the stop 14, etc. shown in amended FIGS. 1-2C introduce new matter. The original disclosure does not disclose, e.g., the size, shape, and/or connection of the pillars relative to other elements. The specific showing of the size, shape, and/or connection of the pillars within a full spectrum of possible sizes, shapes, and/or connections of the pillars is considered under the present disclosure to be new matter. *Cf., In re Smith* and *Ex parte George, supra*.

3. The *original* drawings are objected to because each part of the invention, such as, the dashboard in Claim 12 should be designated by a referential character.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The *original* drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features, such as, the two A-pillars in Claim 8 must be shown *or the features canceled from the claims. No new matter should be entered.*

5. The amendments filed June 26, 2007 and May 7, 2007 are objected to under 35 U.S.C. 132(a) because they introduce new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the new descriptions that refer to the A-pillars 18 in FIGS. 1-2C in the amended abstract and specification. On the filing

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date, Applicant did not show the A-pillars 18. The showing of the A-pillars 18 after the filing date introduce new matter as set forth in the disapproval of drawing correction above. Thus, the descriptions that refer to the pillars 18 in corrected drawings introduce new matter therewith. Applicant is required to cancel the new matter in the reply to this Office Action.

6. Claims 8, 9, and 11-13 are objected to because of the following informalities: no antecedent basis is seen for the term “the *brake* pedal arm” (emphasis added) in Claim 8. Appropriate correction is required.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 8, 9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai et al. (US Patent No. 6,655,489 B2 filed on April 29, 2002).

Regarding Claim 8, Kawai teaches a vehicle (*id.* col. 3, line 30+) comprising a structural beam structure 6, 24-26a extending generally transverse in the vehicle (*id.* col. 3, lines 32-40) and serving as a support for components in the vehicle, a pedal arrangement comprising a pedal arm 13 pivotally supported by a pedal bracket structure 5 which defines a pivot axis 12 for said pedal arm 13 and which is adapted to be fixedly mounted in said vehicle, and a stop element 35, 17 (FIGS. 7-11, *id.* col. 7, line 10+) mounted on said pedal arm 13 at a position in front of said beam structure 6, 24-26a and facing rearwardly with respect to the vehicle so that, in the event of a collision, said stop element 35, 17 comes into contact with said beam structure 6, 24-26a to inhibit the brake pedal arm 13 from moving rearwardly in said vehicle.

Kawai teaches the invention substantially as claimed. However, Kawai does not teach two A-pillars positioned adjacent opposite sides of the vehicle.

It is common knowledge in the art to form two A-pillars positioned adjacent opposite sides of the vehicle in order to support Kawai's beam structure. The two A-pillars are notoriously well known. In fact, Applicant admitted that "[i]n most of today's cars, the A-pillars are normally defined on each side of the vehicle in the area in which the left and right front doors of the vehicle are mounted" in paragraph beginning on page 5, line 30, of Applicant's specification. See also second paragraph on page 8 of the amendment filed on June 26, 2007, *In re Nomiya*, 184 USPQ 607 (CCPA 1975) and MPEP 2129.

It would have been obvious to one having ordinary skill in the art to form two conventional A-pillars positioned opposite sides of the vehicle in order to support Kawai's beam structure as taught or suggested by common knowledge in the art. The results of the instant combination are predictable. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007) and *Ex parte Smith*, B.P.A.I. No. 2007-1925, 6/25/07.

Regarding Claim 9, Kawai's vehicle further comprises a firewall 4 to which said pedal bracket structure 5 is mounted.

Regarding Claim 11, as noted in FIG. 7, the axis 12 is located higher than a part (at 26a in FIG. 7) of the beam structure 6, 24-26a. Applicant's Claim 11 does not specifically call for the pivot axis to be located higher than the *entire* beam structure.

Regarding Claim 12, Kawai teaches a dashboard 4 supported by said beam structure 6, 24-26a (id. col. 3, lines 32-40).

Regarding Claim 13, Kawai's beam structure 6, 24-26a comprises a tube 6.

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9. Claims 8, 9, and 11-13 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai et al. (US Patent No. 6,655,489 B2 filed on April 29, 2002) in view of Forssell et al. (US Patent No. 6,705,670 cited by Applicant in the amendment in the specification).

Regarding Claim 8, Kawai teaches a vehicle comprising a structural beam structure 6, 24-26a extending generally transverse in the vehicle (*id.* col. 3, lines 32-40) and serving as a support for components in the vehicle, a pedal arrangement comprising a pedal arm 13 pivotally supported by a pedal bracket structure 5 which defines a pivot axis 12 for said pedal arm 13 and which is adapted to be fixedly mounted in said vehicle, and a stop element 35, 17 (FIGS. 7-11) mounted on said pedal arm 13 at a position in front of said beam structure 6, 24-26a and facing rearwardly with respect to the vehicle so that, in the event of a collision, said stop element 35, 17 comes into contact with said beam structure 6, 24-26a to inhibit the brake pedal arm 13 from moving rearwardly in said vehicle.

Kawai teaches the invention substantially as claimed. However, Kawai does not teach two A-pillars positioned adjacent opposite sides of the vehicle.

Forssell teaches two A-pillars 72 and 74 positioned adjacent opposite sides of the vehicle in order to support the beam structure 80.

It would have been obvious to one having ordinary skill in the art to form two A-pillars positioned opposite sides of the vehicle in order to support Kawai's beam structure as taught or suggested by Forssell. The results of the instant combination are predictable. *KSR International Co. v. Teleflex Inc.* and *Ex parte Smith, supra*.

Regarding Claim 9, Kawai's vehicle further comprises a firewall 4 to which said pedal bracket structure 5 is mounted.

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Regarding Claim 11, as noted in FIG. 7, the axis 12 is located higher than a part (at 26a in FIG. 7) of the beam structure 6, 24-26a.

Regarding Claim 12, Kawai teaches a dashboard 4 supported by said beam structure 6, 24-26a (*id.* col. 3, lines 32-40).

Regarding Claim 13, Kawai's beam structure 6, 24-26a comprises a tube 6.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee (stopper 30) and Humbert et al. (beam 15).

11. Applicant's arguments filed June 26, 2007 and May 7, 2007 have been fully considered but they are not persuasive.

DRAWINGS

Applicant contended that the addition of A-pillars 18 in the corrected drawing sheets does not add any new matter to the disclosure since the A-pillars were fully described in the originally-filed specification, and A-pillars are a conventional feature of automobile vehicle structure as is well known to those skill in the art.

The Examiner respectfully submits that a written description in the specification may be shown in different ways. For example, the single written description of a well known fastener, such as, "a screw" can be shown by thousands of different patents classified in Class 470 under the classification system of the Office. In the instant case, the A-pillars described in the original disclosure may be shown in different ways since the original specification does not describe, *inter alia*, the size, shape, configuration, and/or location of the A-pillars and how these A-pillars are connected to other structural elements in the vehicle. For example, the A-pillars may have rectangular cross section as shown in Forssell reference or may have an irregular shape as shown

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in Applicant's amended FIG. 1. The specific showing of the size, shape, configuration, location, and/or connection of the A-pillars after the filing date within a full spectrum of possible sizes, shapes, configurations, locations, and/or connections of the A-pillars implied on the filing date introduces new matter.

More importantly, 35 USC 113 states that "[d]rawings submitted after the filing date of the application may *not* be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim." (Emphasis added). See also 37 CFR 1.81(d).

For the forgoing, the Examiner respectfully declines to accept the replacement drawings.

ART REJECTION

The previous art rejection based on Tomono is withdrawn in view of Applicant's amendments. Applicant's arguments with respect to claims 8, 9, and 11-13 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

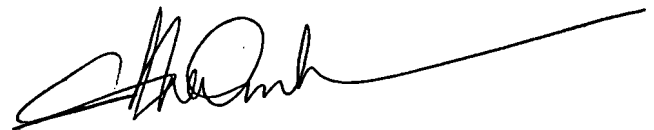
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

August 15, 2007



Vinh T. Luong
Primary Examiner